Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No. 79-1639

BEVERLY BANK, AN ILLINOIS CORPORATION, AS TRUSTEE UNDER TRUST AGREEMENT DATED MARCH 29, 1973, NO. 8-4244, JAY JONES AND BETTY JONES,

Petitioners,

vs.

ILLINOIS SAVINGS AND LOAN ASSOCIATION, AN ILLINOIS CORPORATION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

ARTHUR ROSENBLUM,
69 West Washington Street,
Chicago, Illinois 60602,
Telephone: (312) 263-4936,
Attorney for Petitioners.

Gunthorp-Warren Printing Company, Chicago • Financial 6-6565

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1979

No.

BEVERLY BANK, an Illinois corporation, as Trustee Under Trust Agreement dated March 29, 1973, No. 8-4244, JAY JONES and BETTY JONES,

Petitioners,

vs.

ILLINOIS SAVINGS AND LOAN ASSOCIATION, an Illinois corporation,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

Petitioners, BEVERLY BANK, an Illinois corporation, as Trustee Under Trust Agreement dated March 29, 1973, No. 8-4244, JAY JONES and BETTY JONES, respectfully pray that a writ of certiorari be issued to review the order of the Supreme Court of Illinois, the order of the Appellate Court of Illinois, First Judicial District, and

the orders and judgment of the Circuit Court of Cook County, Illinois entered in this case.

OPINIONS BELOW.

The order of the Supreme Court of Illinois, to date unreported, is reproduced herein as Appendix A. The order of the Appellate Court of Illinois, First Judicial District, is unreported and reproduced herein as Appendix B. The judgment and orders of the Circuit Court of Cook County, Illinois, are unreported and reproduced herein as Appendices C, F, and H.

JURISDICTION.

The petitioners' petition for leave to appeal to the Supreme Court of Illinois was denied on January 30, 1980. This Court has jurisdiction under 28 U.S.C. §1257(3).

QUESTION PRESENTED.

Whether the refusal to allow the presentation of a defense, and proof of set-off, payment and satisfaction in a mortgage foreclosure proceeding constitutes a deprivation of property without due process of law as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

The Fourteenth Amendment to the Constitution of the United States, Section 1, provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Chapter 110, Ill. Rev. Stat., §72, provides, inter alia:

§72. (Civil Practice Act, §72). Relief from judgments

(1) Relief from final orders and judgments after 30 days from the entry thereof, may be had upon petition as provided in this Section. Writs of error coram nobis and coram vobix, writs of audita querela, bills of review and bills in the nature of bills of review are abolished. All relief heretofore obtainable and the grounds for such relief heretofore available, whether by any of the foregoing remedies or otherwise, shall be available in every case, by proceedings hereunder, regardless of the nature of the order or judgment from which relief is sought or of the proceedings in which it was entered. There shall be no distinction between actions and other proceedings, statutory or otherwise, as to availability of relief, grounds for relief or the relief obtainable.

(2) The petition must be filed in the same proceeding in which the order or judgment was entered but is not a continuation thereof. The petition must be supported by affidavit or other appropriate showing as to matters not of record. All parties to the petition shall be notified as provided by rule.

(3) The petition must be filed not later than 2 years after the entry of the order or judgment. Time during which the person seeking relief is under legal disability or duress or the ground for relief is fraudulently concealed shall be excluded in computing the period of 2 years.

(4) The filing of a petition under this Section does not affect the order or judgment, or suspend its operation.

(5) Unless lack of jurisdiction affirmatively appears from the record proper, the vacation or modification of an order or judgment pursuant to the provisions of this Section does not affect the right, title or interest in or to any real or personal property of any person, not a party to the original action, acquired for value after the entry of the order or judgment but before the filing of the petition, nor affect any right of any person not a party to the original action under any certificate of sale issued before the filing of the petition, pursuant to a sale based on the order or judgment.

(6) Nothing contained in this Section affects any existing right to relief from a void order or judgment, or to employ any existing method to procure that relief.

Amended by P.A. 78-665, §1, eff. Oct. 1, 1973; P.A. 79-1366, §16, eff. Oct. 1, 1976.

STATEMENT.

On July 12, 1977, respondent filed a complaint in the Circuit Court of Cook County, Illinois to foreclose a mortgage upon the home of the petitioners, JAY JONES and BETTY JONES, titles to which were held in an Illinois land trust by the petitioner BEVERLY BANK, an Illinois corporation, as Trustee Under Trust Agreement dated March 29, 1973, No. 8-4244. On August 4, 1977, petitioners filed their appearance and answer to the complaint alleging payment or tender of all sums due and owing thereby and denying that they were in default of their mortgage obligations as alleged in the complaint.

On October 5, 1977, respondents filed a motion for summary judgment. On November 7, 1977, the petitioners filed their answer to respondent's motion for summary judgment. No hearing was held with respect to said motion.

On January 12, 1978, irrespective of the appearance and answer filed by petitioners, the circuit court entered an order of default (Appendix C) against all defendants, including petitioners, erroneously stating and upon the mistaken basis that "all of said defendants having failed to file an answer, they are hereby adjudged in default and it is ordered that the Complaint herein be taken as confessed against all the said defendants." (Appendix C; emphasis supplied). In addition, irrespective of the answer filed by petitioners to the respondent's motion for summary judgment and the fact that no hearing had been held on said motion, on January 12, 1978, the circuit court entered the decree of foreclosure and sale, which provided, inter alia, "And it further appearing to the Court that Plaintiff, on its Motion for Summary Judgment against BEVERLY BANK, Trust No. 8-4244, JAY JONES and BETTY

JONES, is entitled to judgment and all other defendants having failed to plead as required by law, but therein made default, and that an order of default has been heretofore entered against the above mentioned defendants, so finding to plead, ..."

On January 19, 1978, a public sale of the real estate was held pursuant to the aforesaid decree of foreclosure and sale, and on February 22, 1978, the circuit court entered an order approving, ratifying and confirming the sale of the premises, the distribution of the proceeds and the report of sale and distribution (Appendix F).

On August 14, 1978, petitioners filed two separate petitions under section 72 of the Illinois Civil Practice Act, Ill. Rev. Stat., Ch. 110, §72 before the circuit court. The first petition sought to set aside the decree of foreclosure of

sale, to vacate the sale, and for other relief, alleging that there was no default on the part of the petitioners, and that the value of the property exceeded $300,000.00. The second petition sought the same relief, alleging that the default order, the decree of foreclosure and sale, and all subsequent orders and procedures were erroneously based on the failure of the petitioners to answer, appear, or plead, and further alleging that there was no arrearage, that the effect of the sale to respondent would cause loss to the petitioners in an amount exceeding $170,000.00 and their home, since the sale price was only $184,000.00. In addition, on November 8, 1978, petitioners presented a motion for leave to file a petition and counter-complaint in chancery for accounting, set-off and other relief, together with said petition (Appendix G).

On November 8, 1978, the circuit court summarily denied ("without prejudice") the petitioners' motion for leave to file their petition, counter-complaint for accounting, set-off and other relief, and further summarily, and without hearing, denied the petitioners' previously filed petitions under section 72 of the Illinois Civil Practice Act.

On December 6, 1978, the petitioners presented a petition for reconsideration (Appendix I) which was on that day summarily denied. Both the aforesaid petition and counter-complaint and the petition for reconsideration, alleged under oath, in pertinent part and summary, that the petitioners had paid the respondent the sum of $20,000.00 which had not been credited toward their indebtedness, that the respondent, by reason of another foreclosure proceeding instituted against the petitioners involving a different mort-

gage and other parcels of land, had recovered $165,491.36[1] in excess of that obligation, which petitioners claimed should be set-off against their indebtedness involved in these proceedings, and that the total sum of the aforesaid credit and set-off was in excess of and satisfied the mortgage obligation on the petitioners' home, which was the subject matter of this litigation.

On December 21, 1978, petitioners filed a notice of appeal from the aforesaid orders. On October 2, 1979, without oral argument, the Appellate Court of Illinois, First Judicial District, affirmed the judgment of the circuit court by an "order disposing of appeal under Supreme Court Rule 23." (Appendix B). On November 23, 1979,

[1]It should be noted that there was a mathematical error made in the petitions, and that the actual excess was in the amount of $166,063.23.

petitioners filed a petition for leave to appeal in the Supreme Court of Illinois. On January 30, 1980, without requiring the submission of an answering brief, and without oral argument, the Supreme Court of Illinois summarily denied the aforesaid petition for leave to appeal (Appendix A).

REASONS FOR GRANTING WRIT.

The pleadings filed by petitioners before the Illinois courts, under oath, clearly established factual and legal defenses to the foreclosure proceedings. The circuit court granted the disputed motion for summary judgment without affording petitioners a hearing or trial. In addition, petitions under section 72 of the Illinois Civil Practice Act, and the petition and counter-complaint in chancery for accounting, set-off and other relief (Appendix G), and the petition for reconsideration (Appendix I), set forth that after the decree of foreclosure was entered and before the sheriff's deed was issued, the respondent had been paid in full and the obligations under the mortgage were satisfied. The circuit court summarily and without hearing denied the section 72 petitions, refused ("without prejudice") to allow the filing of the

aforesaid petition and counter-complaint and denied the petition for reconsideration, without giving the petitioners an opportunity to be heard or prove their allegations. The matter was still before the court and execution had not been completed. The sheriff's deed did not issue until December 20, 1978.

Under section 72, petitioners incorporated the relief previously granted by the common law writ of audita querela, which was abolished in Illinois. However, such writs enabled a judgment debtor to avoid execution by pleading a satisfaction or discharge of a judgment and the relief under section 72 petitions conforms that formerly followed on a writ of audita querela. American National Bank v. Penn. R. Co., 40 Ill.2d 186 (1968); Harding v. Hawkins, 141 Ill. 572, 583-584, 31 N.E. 307, 309 (1892); Handley v. Moburg, 266 Ill. App. 356, 361 (1932). The petition

for reconsideration and the petition and counter-complaint for accounting, and set-off set forth under oath a satisfaction and discharge of the judgment under this mortgage. The respondent never answered these allegations, thus admitting the truth thereof; but, the circuit court refused to permit the filing of the petition, much less consider the same. If in fact the respondent was paid all obligations due under the mortgage, then the circuit court should have satisfied the mortgage since the sheriff's deed had not yet issued, and the respondent would be unjustly enriched. Fundamental fairness required that an evidentiary hearing be afforded to the petitioners, a day in court on their allegations. The appellate court completely disregarded this argument, and rendered no opinion as to its merits. The Supreme Court of Illinois denied the petition for leave to appeal summarily.

The pleadings further show that the petitioners were obligated to the respondent on a second and different mortgage involving other lands in Will County, Illinois and in Cook County, Illinois, for a single sum of $166,063.23. The respondent foreclosed in Will County on that mortgage and received $165,992.36 at that sheriff's sale (Appendix E). It foreclosed on the second parcel in Cook County and received $166,063.23 at that sheriff's sale (Appendix D). The respondent thus received a total of $332,055.59 on that mortgage, when the total due it was $166,063.23. It thus received $165.992.36 belonging to these petitioners, and still holds that sum. Moreover, petitioners paid the respondent the sum of $20,00.00 toward the mortgage obligation involved herein, which was not credited to their indebtedness. Significantly and determinatively, the total amount of these alleged credits and

set-offs exceeded the total sum alleged to be due and owing respondent in this case.

The petition of November 8, 1978, with its counter-complaint, prayer for set-off and accounting, and, the petition for reconsideration sought to apply those credits and set-offs to the mortgage obligations involved in this proceeding before the sheriff's deed issued and before execution. To deny the filing of such a petition, "without prejudice", answered nothing. The petitioners still were left without relief, and thereby lost their home and suffered the losses hereinbefore described. The appellate court disregarded that set of facts completely. Instead, the appellate court spoke of "lack of diligence."

The results of the sales in Will County and Cook County on the second mortgage were not available to the petitioners on January 12, 1978, because they were held

after the entry of the decree of foreclosure on January 12, 1978. One was held March 16, 1978 (Appendix E), and the other on February 21, 1978 (Appendix D). The reports of those sales were not served upon the petitioners, and thus the credits due the petitioners were not known until November, 1978. When the results were known to the petitioners, they promptly and diligently, on November 8, 1978, attempted to bring the matters to the attention of the circuit court by the petition and counter-complaint, and renewed that effort in their petition for reconsideration.

In Smith v. Lehn, 46 Ill. App.3d 667 (1977), it was held that the requirement of diligence is not enforced in presenting a defense when the basis of a section 72 petition was not available during the pendency of the underlying action. There, the petitioners claimed that the

respondent was seeking to execute on a judgment that had already been paid. Petitioners herein make the same claim. Petitioners herein could not have known of the credits due them at or prior to the entry of the decree of foreclosure, and asserted this set-off as soon as they had knowledge thereof.

Since the purpose of section 72 petitions is addressed to the equitable powers of the court and the court is primarily concerned with the prevention of an injustice [Dept. of Public Works v. Vogt, 51 Ill. App.3d 770 (1977) and Fisher v. Rhodes, 22 Ill. App.3d 978 (1974)], the trial court should have held an evidentiary hearing. The appellate court and supreme court should have applied those equitable principles if the trial court did not, Keel v. Kostka, 106 Ill. App.2d 172 (1969).

In Diner's Club v. Gronwald, 356 N.E. 2d 1261 (1976), an ex parte judgment was

set aside, and although the court held an oral motion was not a proper section 72 petition, the opinion is illuminating as to the case at bar, with particular reference to the petition and counter-claim presented November 8, 1978. The court held that "a petition", verified and filed more than thirty days after the entry of a judgment will be construed as a section 72 petition, stating:

> [A]s to the requirement of due diligence, justice and good conscience may require that a judgment be vacated even though there may be a lack of due diligence. (citing cases).
>
> Courts are not strictly bound by precedent in affording post judgment relief. . . .

The appellate court herein noted that petitioners did not file a report of proceedings. In that there were no evidentiary hearings at any time during the entire proceedings, there was therefore no transcript or report of proceedings to present or file.

The appellate court concerned itself only with diligence, the two section 72 petitions and the fact that the decree of January 12, 1978 was a final order, and disposed of the matter by the summary judgment order contained in that decree. The appellate court did not in any way consider the November 8, 1978 petition and counter-claim, nor the petition for reconsideration of December 6, 1978. Both of these pleadings clearly establish that the respondent mortgage company has received payment in full, that such facts could not have been ascertained prior to the decree, and that such facts came to light after the decree and before execution, and before the issuance of a sheriff's deed on December 20, 1978.

If it is true that the respondent mortgage company received and holds sufficient monies from the receipts of the foreclosure sales of the second mortgage to

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satisfy the mortgage obligations of this mortgage, that the parties involved in all three foreclosure sales are the same, then the court should have applied those proceeds to this mortgage and satisfied it; even though the decree of foreclosure and sale of January 21, 1978 may have been entered properly. Petitioners asked only to have a hearing to prove that credit and payment, and were denied that right.

Petitioners were therefore deprived of both a hearing and trial adjudicating their alleged and disputed debt by the imposition of a default judgment, entered despite petitioners' timely filing of appearance and answer. Section 72 allows the party wronged in such a case a procedure to correct such an erroneous judgment. That avenue too was foreclosed by decision of the circuit court. Petitioners thus lost ownership and possession of their home and two parcels of land, the combined

value of which substantially exceed their obligations to respondent. They have nevertheless received no portion of the surplus.

Procedural rights guaranteed by the due process clause of the Fourteenth Amendment to the Constitution of the United States are prerequisite to the taking of a person's property. Board of Regents v. Roth, 92 S.Ct. 2701, 408 U.S. 564 (1972). A serious infringement upon property rights has taken place. Although "the formality and procedural requisites for the hearing can vary depending upon the importance of the interests involved and the nature of the proceedings" Boddie v. Connecticut, 91 S.Ct. 780, 401 U.S. 371 (1971), "the Constitution requires a meaningful and timely opportunity to be heard." Mitchell v. W.T. Grant Co., 94 S.Ct. 1895, 416 U.S. 600 (1974).

Clearly recognized is the due process right to present a defense against

the imposition of asserted but disputed liability. Such procedure applies to collection of debt cases, preventing the utilization of remedies beyond constitutional bounds. This Court has held pre-judgment garnishment of a debtor's wages without a hearing violative under the Fourteenth Amendment of the right of a debtor to be heard before a creditor may take action directly against the property of the debtor. Sniadach v. Family Finance Co., 89 S.Ct. 1820, 395 U.S. 337 (1969). In the case at hand, there has been no allegation of waiver of this right by contract or by action. To the contrary, petitioners have vigorously attempted to pursue, albeit without success, their procedural rights.

The Illinois courts have enabled the respondent creditor to acquire petitioners' property without due process of law. The courts' further empowered agent of the state, in the person of the sheriff, consummated

the sale of the property, and unjustly enrich the respondent. See generally, Shelley v. Kraemer, 68 S.Ct. 836, 334 U.S. 1 (1947). This unfortunate but intimate interrelation between the state and the respondent deprived petitioners of their constitutionally guaranteed rights to defend the disputed taking of their property.

CONCLUSION.

It is respectfully submitted that petitioners have been denied those rights fundamental to the Constitution and to our system of justice. Such a result should not be allowed to stand.

WHEREFORE, for the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

ARTHUR ROSENBLUM
69 West Washington St.
Chicago, IL. 60602
(312) 372-2345

Attorney for Petitioners.

APPENDIX

52733

ILLINOIS SUPREME COURT
CLELL L. WOODS, CLERK
SUPREME COURT BUILDING
SPRINGFIELD,ILL.62706
(217)782-2035

January 30,1980

Mr. Arthur Rosenblum
Attorney at Law
69 W. Washington St., S#2010

No. 52733 - Illinois Savings and Loan Association, an Illinois Corporation, respondent, vs. Beverly Bank, as Trustee, etc., et al., petitioners. Leave to appeal, Appellate Court, First District.

The Supreme Court today denied the petition for leave to appeal in the above entitled cause.

Very truly yours,

Clerk of the Supreme Court

Second Division
October 2, 1979

79-276

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ILLINOIS SAVINGS AND LOAN ASSOCIATION, an Illinois corporation, Plaintiff-Appellee, vs. BEVERLY BANK, an Illinois corporation, as Trustee under Trust Agreement dated 3/29/73, #8-4244; JAY JONES, BETTY JONES, REDUCE ENVIRONMENT POLLUTION CORPORATION; COMMODITY WAREHOUSE CORPORATION; UNKNOWN OWNERS, et al., Defendants-Appellants.	Appeal from the Circuit Court of Cook County. Honorable Raymond K. Berg, Judge Presiding.

ORDER DISPOSING OF APPEAL
UNDER SUPREME COURT RULE 23

Defendants-mortgagors, Jay Jones and Betty Jones, appeal from an order of the circuit court of Cook County denying their petition for relief under

section 72 of the Civil Practice Act. (Ill. Rev. Stat. 1977, ch. 110, par.72.) They contend that the trial court erred in failing to grant their claim for relief or to hold an evidentiary hearing on their allegations.

The record shows that on July 12, 1977, plaintiff filed a complaint to foreclose a mortgage dated January 30, 1975. Defendants appeared and filed an answer to the complaint denying that they were in default in the amount alleged in the complaint. On October 5, 1977, plaintiff filed a motion for summary judgment based on the affidavit of its treasurer that $172,237.60 in principal and interest was due as of September 20, 1977, along with $5,413.84 in costs and attorney's fees. Defendants filed a written answer to the motion for summary judgment, alleging tender of checks for $3,100 on

July 1 and July 12, 1977, for $1,500 on July 29, 1977, and for $1,500 on September 15, 1977, which plaintiff had allegedly refused. On January 12, 1977, the trial court granted summary judgment. This order recited that the court had examined the files and records and heard evidence and was fully advised in the premises. On February 23, 1978, an order approving a deficiency judgment and sheriff's report of sale and distribution was entered.

On August 14, 1978, defendants filed two separate motions under section 72 of the Civil Practice Act. These motions recited the procedural history of the case, as heretofore set forth, reiterated that plaintiff refused tenders by defendants in the amounts of $1,500, $1,550 and $3,100 and asserted that plaintiff had failed to apply a $20,000 credit to the mortgage obligation. One petition

claimed that the court entered a default judgment against defendants for failure to answer, despite the fact that an answer was on file and defendants had appeared and alleged various settlement negotiations between the parties. Defendants requested that the decree of foreclosure and sale and the order approving the sheriff's sale be set aside and that the matter be set for hearing.

Plaintiff filed a reply, setting forth that the decree of foreclosure and sale was approved as to content and form by the attorney for the defendants, Arthur Rosenblum, prior to its entry,and that the decree of foreclosure and sale entered on January 12, 1978, "was done as an agreed order with the consent" of plaintiff's attorney and defendants' attorney and that the latter attorney had actual knowledge of the entry of the

decree of foreclosure and sale, the sheriff's sale and the report of sheriff's sale. The reply admitted there had been numerous attempts to negotiate a settlement, but no settlement had been reached, that defendants had made no tender to redeem the premises and that the arrearage as reflected in the decree of foreclosure was true and correct.

Defendants' counsel, Arthur Rosenblum, filed a response which, in form, is verified by him. However, the copy contained in the record does not contain signatures. In the response, Rosenblum avers defendants' denial that the decree of foreclosure and sale was approved as to content and that any approval thereon was made to indicate that the decree was in accordance with the order of court and the direction of the presiding judge. Defendants also admitted that

they made no tender to pay the alleged arrearage but that no arrearage was correctly reflected in the decree of foreclosure. This response also incorporates by reference another pleading which again sets forth the history of the lawsuit and defendants' claims and requests for an accounting and other relief.

The trial court denied the petition and a motion to reconsider; and defendants have appealed contending that no evidentiary hearing was ever held, that an order of default was improperly entered and that defendants' allegations of facts had not been rebutted. Plaintiff responds that section 72 cannot be used as a substitute for appeal or to relitigate issues already determined.

Although defendants characterize the order of January 12, 1978, as a

judgment, plaintiff disputes this, stating in its brief that the court heard the arguments of counsel for both parties, and then allowed plaintiff's motion for summary judgment and entered the decree of foreclosure and sale. Plaintiff correctly points out that the order of default pertains not to defendants, Jay Jones and Betty Jones, but to other parties. Defendants have not filed a report of preceedings. It is uncontradicted according to the pleadings that defendants' counsel was aware of the summary judgment order, knew that it would be entered, and agreed to its entry on January 12, 1978. He had actual knowledge of the entry of the decree of foreclosure and sale and of the sheriff's sale and of the report of the sheriff's sale approved by the court.

The purpose of a section 72 petition is to bring before the court facts which

through no fault of the moving party were not brought to the attention of the court, but which, had they been known by the court, would have prevented the entry of the judgment. (Lilly v. County of Cook (1978), 60 Ill.App. 3d 573, 576, 377 N.E. 2d 136.) If defendants were not present on January 12, 1978, they have offered no excuse for not appearing. Nor is there any explanation why the matters set forth as a defense in the section 72 petition could not have been set forth earlier since defendants did file a response to the motion for summary judgment. Under these circumstances, we think it is clear that defendants were not entitled to section 72 relief. The petition sets forth no facts showing the exercise of due diligence prior to the entry of the judgment and does not set forth a meritorious defense in the sense

of setting forth facts which, had they been known to the trial court, would have prevented entry of the judgment. To the contrary, it is apparent that defendants failed either to appeal the final order entered on January 12, 1978, or move to vacate it. Defendants have attempted to use section 72 to relitigate the issues decided by the trial court in the summary judgment procedure. (Dowling v. Baker (1975), 29 Ill.App. 3d 832, 331 N.E. 2d 320.) This they cannot do, since it is well settled that section 72 cannot be used as a substitute for an appeal. Under the circumstances, we conclude the trial court properly denied defendants' petition for section 72 relief. In re Petition to Annex Certain Territory to Village of Willowbrook (1963), 42 Ill. App. 2d 432, 437, 192 N.E. 2d 553.

No substantial question is presented

by this appeal and an opinion would have no precedential value. Therefore, pursuant to Supreme Court Rule 23 (Ill. Rev. Stat. 1977, ch. 110A, par. 23), the judgment of the circuit court of Cook County is affirmed.

Dated at Chicago, Illinois, this 2nd day of October, 1979.

ENTER:

_____
JUSTICE

_____
JUSTICE

_____
JUSTICE

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT-CHANCERY DIVISION

ILLINOIS SAVINGS AND LOAN ASSOCIATION, PLAINTIFF, VS. BEVERLY BANK, as Trustee u/t/a dated 3/29/73, #8-4244, JAY JONES, BETTY JONES, et al, DEFENDANTS.	IN CHANCERY NO. 77 CH 4763 FORECLOSURE

ORDER OF DEFAULT

This matter coming on to be heard on the motion of R. STEVEN POLACHEK and DWIGHT C. ADAMS, attorneys for the Plaintiff, a corporation organized and existing under the laws of the State of Illinois, and the requisite affidavit having been filed and due notice of the pending of this suit having been given to the defendants, unknown owners and nonrecord claimants by publication, which notice in manner and content was

in all respects as required by law.

All of said defendants having failed to file an answer, they are hereby adjudged in default and it is ordered that the Complaint herein be taken as confessed against all the said defendants.

ENTER:

_____
JUDGE

R. STEVEN POLACHEK
33 West Slade St.
Palatine, Illinois
358-4440

STATE OF ILLINOIS)
COUNTY OF COOK) ss.

IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CHANCERY DIVISION

ILLINOIS SAVINGS & LOAN ASSOCIATION,

v.

BEVERLY BANK as Trustee u/t/a/ dated 2/21/75, #8-4950, JAY JONES, BETTY JONES, et al.

Sheriff's No. 22901

Case No. 77 CH 3738

SHERIFF'S REPORT OF SALE AND DISTRIBUTION

I, RICHARD J. ELROD, Sheriff of Cook County, Illinois, respectfully report that a public sale of real estate was held pursuant to a decree entered in the above entitled cause on 19th day of JANUARY, 1978, in accordance with the applicable law.

Pursuant to the terms of said decree I advertised said sale in a secular public newspaper of general circulation published regularly in Chicago, Cook County, Illinois for more than one year prior to the first publication of said notice. A certificate of said publication with a printed copy of said notice is attached hereto as Exhibit "A". The public sale

was advertised to be held on the 21st day of FEBRUARY, 1978, at the hour of 1:00 o'clock in the afternoon, in Room 704, Chicago Civic Center, Chicago, Cook County, Illinois.

At said time and place, I offered for sale the hereinafter described real estate to the highest and best bidder for cash, in accordance with law. Receiving no bids for any part or portion thereof, I offered for sale said real estate in its entirety. Thereupon 1ST FINANCIAL SAVINGS & LOAN ASSOCIATION (FORMERLY ILLINOIS SAVINGS & LOAN ASSOCIATION) (name of accepted Bidder) bid the sum of ONE HUNDRED SIXTY SIX THOUSAND, SIXTY THREE and 23/100ths---- ($166,063.23---) Dollars. That being the highest bid therefor, I struck off and caused to be sold to said bidder, for said sum of money, the said real estate, which is hereinafter described: (Legal Description)

Lot 8 in Grover C. Elmore's and Company's Kedzie Avenue Farms, a subdivision of the South East 1/4 of Section 11, Township 35 North, Range 13, East of the Third Principal Meridian, according to the plat thereof recorded November 26, 1945 as document 13665692, in Cook County, Illinois.***

The proceeds of said sale were disbursed as follows:

1. To Plaintiff:		
(a)	The amount due under the decree (less attorney's fees)	$159,699.37
(b)	Interest on said amount at 6% per annum from 1/19/78 DATE OF DECREE to 2/21/78 DATE OF SALE (26.25)	866.25
(c)	Attorney's fees	5,000.00
(d)	Publication costs	83.61
	SUBTOTAL	$165,649.23
2. Retained by Sheriff:		
(a)	Certificate of Sale	10.00
(b)	Recording of Registration	4.00
(c)	Commission on Sale	400.00
	SUBTOTAL	$ 414.00
	TOTAL	$166,063.23

Deficiency or
Surplus -0-

Amount Bid at Sale $166,063.23

Upon approval of this report, a Certificate of Sale will be executed and delivered to the Plaintiff in accordance with said decree and law, and a duplicate thereof will be filed for record with the Recorder of Deeds of Cook County, Illinois and/or registered with the Registrar of Titles of Cook County, Illinois.

Respectfully submitted this 21 day of February, 1978.

RICHARD J. ELROD
SHERIFF OF COOK COUNTY,
ILLINOIS

By: Antoinette M. Nasca /s/
Deputy Sheriff

STATE OF ILLINOIS)
COUNTY OF WILL)

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT OF ILLINOIS - WILL COUNTY GENERAL DIVISION

1st Financial Savings and Loan Association, formerly Illinois Savings and Loan Association, a corporation of Illinois, Plaintiff,	
vs.	NO. W77G 1825 CH
Beverly Bank, as Trustee under Trust Agreement dated February 21, 1975, No. 8-4950, et al, Defendants.	

SHERIFF'S REPORT OF SALE AND DISTRIBUTION

TO THE HONORABLE PRESIDING JUDGE OF SAID COURT:

In pursuance of a decree entered in the above-entitled cause on the 6th day of February A.D.1978, I Joseph B. Trizna, Sheriff of Will County, do now respectfully report that 3 days having elapsed after the date of said decree and default

having been made by the said defendant in the payment of the amount required to be paid by said decree within the time limited. I advertised the premises described in said decree for sale at public vendue between the hour of nine o'clock in the morning and the setting of the sun of the same day by causing a notice containing the title and number of said cause, the names of the parties thereto, the name of the Court wherein such cause was pending and describing said premises and stating the time, place and terms of said sale to be published 23 times in the Labor Record a secular newspaper printed and regularly published weekly in the City of Joliet, County of Will and State of Illinois for at least twelve months prior to the first publication of said notice and of general circulation throughout said county and

state, the date of the first paper containing said notice being the 23rd day of February, A.D.1978, and the date of the last paper containing said notice being the 9th day of March, A.D.1978, and a printed copy of said notice together with the Certificate of Publication thereto affixed is hereto attached marked "Exhibit A" and made a part of this report.

I further report that on the 16th day of March, A.D. 1978, the day fixed for said sale according to the terms of said notice and at the hour therein named, I attended at the place of sale mentioned in said notice and offered said premises for sale at public auction to the highest and best bidder for cash.

Whereupon, 1st Financial Savings and Loan Association offered and bid therefore the sum of One Hundred Sixty-five Thousand Nine Hundred Ninety-two and

36/100 Dollars ($165,992.36) and that being the highest and best bid offered therefore, I accordingly struck off and sold to said bidder for said sum of money the said premises, which are situated in the County of Will and State of Illinois, and are described as follows, to wit:

> The East 330 feet of the South half of Section 19, in Township 34 North, and in Range 14, East of the Third Principal Meridian, in Will County, Illinois.

The amount realized from the sale of said premises was in the aggregate the sum of One Hundred Sixty-five Thousand Nine Hundred Ninety-two and 36/100 Dollars($165,992.36).

I have disposed of the proceeds of said sale in the manner following, to wit:

I have paid to Sam H. Paul, Clerk of the Court, the sum of Nine Dollars ($9.00) being the amount of costs taxed in this cause and have taken his receipt

therefore which is hereto attached marked "Exhibit B."

I have retained the sum of Four Hundred Ninety-two Dollars($492.00) being the amount of my fees commissions and disbursements herein, including publication costs of Fouty-eight and 60/100 ($48.60) Dollars, and Five Dollars ($5.00) for recording duplicate Certificate of Sale.

I have paid to the plaintiff in this cause, 1st Financial Savings and Loan Association, the sum of One Hundred Sixty-five Thousand Four Hundred Ninety-one and 36/100 Dollars ($165,491.36) being the amount found due said plaintiff under said decree with interest thereon and have taken its receipt therefore which is hereto attached marked "Exhibit C."

The distribution of the proceeds of said sale is more fully shown by the following:

SCHEDULE

Paid to Sam H. Paul, Clerk of the Court, taxed costs-	$	9.00
Retained by me for fees, commissions and expenses-		492.00
Paid to Plaintiff, 1st Financial Savs.& Loan Association, to apply on principal, interest and advances-		$165,491.36
Total amount disbursed-		$165,992.36

I have executed and delivered to the purchaser at said sale the Certificate of Sale directed by said decree and by law to be executed and have filed in the office of the Recorder of Deeds of said Will County a duplicate of said certificate.

In conclusion, I report that the proceeds of said sale were sufficient to pay the amount found due plaintiff for principal, interest and advances, and costs and expenses of sale;

All of which is respectfully submitted this 20th day of March A.D. 1978.

Sheriff of Will County, Illinois

STATE OF ILLINOIS)
COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY,
ILLINOIS - COUNTY DEPARTMENT
CHANCERY DIVISION

ILLINOIS SAVINGS AND LOAN ASSOCIATION, PLAINTIFF	)	
VS.	)	NO. 77 CH 3738
BEVERLY BANK as Trustee u/t/a, dated 2/21/75, #8-4950, JAY JONES, BETTY JONES, et al, DEFENDANTS	)	

ORDER APPROVING
SHERIFF'S REPORT OF SALE
AND DISTRIBUTION

NOW COMES Richard J. Elrod, Sheriff of Cook County, and presents and files herein his Report of Sale and Distribution of Proceeds of Sale of the premises involved herein, pursuant to the Decree of Foreclosure and Sale heretofore entered herein.

And the Court having examined said report, and no causes to the contrary having been shown, and the Court being

F

fully advised in the premises, finds, that said Sheriff has in all things proceeded in accordance with all of the terms of said decree in making the sale of the premises involved herein and in distributing the proceeds derived from the said sale.

The Court further finds that the proceeds of the sale of said premises were in the sum of $166,063.23; that said Sheriff has retained therefrom for his fees, disbursements and commissions, in accordance with the terms of said decree, the sum of $414.00; that said Sheriff has credited to the Plaintiff, 1ST FINANCIAL SAVINGS AND LOAN ASSOCIATION, formerly known as ILLINOIS SAVINGS AND LOAN ASSOCIATION,a corporation organized and existing under the laws of the State of Illinois, proceeds of said sale totalling $165,649.23 to apply on account, the

amount due to said Plaintiff under the provisions of the decree herein being $165,649.23.

The Court further finds that the mortgage securing the indebtedness covers the premises being described as follows:

> Lot 8 in Grover C. Elmore's and Company's Kedzie Avenue Farms, a Subdivision of the South East 1/4 of Section 11, Township 35 North, Range 13, East of the Third Principal Meridian, according to the plat thereof recorded November 26,1945 as document 13665692, in Cook County, Illinois.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that said sale of the premises involved herein by said Sheriff and the distribution by him of the proceeds of said sale and his Report of Sale and Distribution be, and they are hereby in all respect approved, ratified and confirmed.

ENTER:

_____

J U D G E

STATE OF ILLINOIS)
COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT CHANCERY DIVISION

ILLINOIS SAVINGS AND LOAN ASSOCIATION, now known as 1st FINANCIAL SAVINGS AND LOAN ASSOCIATION, PLAINTIFF	)	
VS.	)	NO. 77 CH 4763
BEVERLY BANK as Trustee u/t/a dated 3/39/73 #8-4244; JAY JONES, BETTY JONES, et al. DEFENDANTS.	)	

COUNTER-COMPLAINT IN CHANCERY FOR ACCOUNTING, SET-OFF AND OTHER RELIEF

NOW COMES, JAY JONES and BETTY JONES, individually and as sole beneficiaries of a certain land trust known as Beverly Bank as Trustee under trust dated 3/29/73, #8-4244 also defendant herein; and, on behalf of the said Beverly Bank as Trustee, under the above trust, complain of the Plaintiff as follows:

1. That on or about the 30th day of January, 1975, the said Beverly Bank as Trustee through the direction of Jay Jones and Betty Jones, and Jay Jones and Betty Jones individually, executed a certain mortgage in favor of the plaintiff for the sum of ONE HUNDRED FIFTY THOUSAND ($150,000.00) DOLLARS, which was recorded in the officer of the Recorder of Deeds of Cook County, Illinois as No. 22991639 on February 5, 1975.

2. That the Plaintiff instituted the above Complaint herein to foreclose the said mortgage and requested other relief because of an alleged default by the Counter-Plaintiffs herein, alleging that the default as of June 1, 1976, including all suceeding payments and the principle balance was due in the sum of $153,936.02.

3. That the Defendants herein filed an Appearance and Answer thereto.

4. That the Plaintiff defaulted the Defendants and entered a Decree of Foreclosure and Sale on January 12, 1978, for failure to answer or plead although the defendants had in fact answered and pleaded. That the Plaintiff thereupon did through the Sheriff of Cook County, Illinois hold a public sale on February 16, 1978, and caused the Court to enter an order on February 23, 1978, approving the Sheriff's Report and Sale and Distribution. That the entire proceeding was in error by reason of the fact that it was based on alleged failure of the Defendants to plead or answer,-- all of which was in error.

5. That the Sheriff's Report and Sales filed February 22, 1978, set forth that their was bid in on the said

Sheriff's Sale the sum of $184,445.46, and that the amount due to the Plaintiff was $184,859.46 and the Court thereupon entered a deficiency against the defendants in the sum of $414.00.

6. That thereafter, namely on August 14, 1978, the Defendants, these Counter-Plaintiffs, presented a Petition to the Court, under Section 72 of the Illinois Civil Practice Act, which Petition is incorporated herein by reference, which Petition is still pending before this Court. That the said Petition points out to the Court, amongst other things, that the Order of Default, the Decree of Foreclosure and Sale, the Sheriff's Sale, the order approving the Sheriff's Report and Sale, are in error since they are based on the alleged failure of the Defendants to plead or answer.

7. That these Defendants paid to the Plaintiff in regard to the above mortgage the sum of TWENTY THOUSAND ($20,000.00) DOLLARS, on or about May 24, 1977, which amount is not and was not credited to the Defendants by the Plaintiff and which sum should have been used to reduce any obligations of the Defendants on the mortgage. That the Plaintiff through their attorney has acknowledged such a credit. That the Plaintiff did not inform the Court of the said $20,000.00 credit, so that assuming the Sheriff's Report and Sale was correct, the amount due at the time of the sale, by these Defendants to the Plaintiff was ONE HUNDRED SIXTY FOUR THOUSAND FOUR HUNDRED FORTY FIVE AND 46/100 ($164,445.46) DOLLARS, plus further credits by reason of interest charged and ascertained by Plaintiffs

on the total sum of $184,445.46.

8. That the Defendants, these Counter-Plaintiffs, were obligated to the Plaintiff on a second and different mortgage dated May 15, 1974, in the sum of ONE HUNDRED FIFTY THOUSAND ($150,000. 00) DOLLARS, which gave a security of two parcels of real estate; one in Will County, Illinois and one in Cook County, Illinois, and recorded as follows:

A. Cook County property recorded as Document No. 22719099.

B. Will County property recorded as R74-11278.

9. That the Plaintiff herein claimed that the persons obligated on the mortgage set forth in Paragraph 8 were Jay Jones, Inc., Jay Jones, Betty Jones, Beverly Bank as Trustee under Trust Agreement dated February 21,1975, Trust 8-4950, which trust is controlled by Jay Jones and Betty Jones, the sole beneficiaries thereof.

10. That the Plaintiff herein, contended that the persons named in the preceding Paragraph 9, had defaulted on the said mortgage, which involved the property in Will County and not Cook County, and thereupon instituted two separate foreclosure suits, one in the Circuit Court of Will County No. W77G 1825CH, and the second suit in the Circuit Court of Cook County, Illinois under No. 77 CH 3738 - both foreclosures involving the same mortgage in each of the counties on each parcel of property given as security under:

A. That under case 77CH3738 the Plaintiff herein, and Plaintiff in the said 77CH3738 proceeded to default the defendants therein, obtained a Decree of Foreclosure and Sale, proceeded to a Sheriff's Sale, obtained an order approving the Sheriff's Report and Sale and Distribution, and, obtained a Deed to the property in Cook County,Illinois. That at said sale, there was paid the sum of ONE HUNDRED

SIXTY SIX THOUSAND SIXTY THREE AND 23/100 ($166,063.23) DOLLARS, which sum included $5,000.00 attorney's fees.

B. That under Case W77G1825CH, the Plaintiff herein and Plaintiff in the above entitled matter proceeded to default the Defendants therein, obtained a Decree of Foreclosure and Sale, proceeded to a Sheriff's Sale, obtained an order approving the Sheriff's Report and Sale and Distribution, and, obtained a Deed to the property in Will County, Illinois. That at said sale, there was paid the sum of ONE HUNDRED SIXTY FIVE THOUSAND NINE HUNDRED NINETY TWO and 36/100 ($165,992.36) DOLLARS, which sum included $3,000.00 in attorney's fees.

11. That the Plaintiff herein charged two amounts for attorney's fees to foreclose the same mortgage and in equity, the Court should set a reasonable fee for such foreclosure rather than the sum of a total of $8,000.00.

12. That the Plaintiff, assuming its claim is correct, recovered THREE HUNDRED THIRTY ONE THOUSAND FIVE HUNDRED

FIFTY FOUR and 59/100 ($331,554.59) DOLLARS, wherein in fact, at the most, the Plaintiff was entitled to recover by reason of the single mortgage obligation, the sum of ONE HUNDRED SIXTY SIX THOUSAND SIXTY THREE AND 23/100 ($166,063.23) DOLLARS, and is therefore unjustly enriched and holds the monies of the Defendants in the sum of ONE HUNDRED SIXTY FIVE THOUSAND FOUR HUNDRED NINETY ONE AND 36/100 ($165,491.36) DOLLARS, plus any amount set by the Court as an excessive fee for attorney's fees.

13. That the Defendants herein make claim against the Plaintiff for such excessive funds above set forth, or in the alternative have a set-off and credit against any mortgage obligation of their home, which is the subject matter of the present Complaint in Chancery, namely 77CH 4763. That this Court

should order an accounting, allowing a set-off and direct the Plaintiff to deliver to the Defendants a full and complete Satisfaction of Decree, cancellation and release of the mortgage obligation and note hereunder.

14. That the Defendants herein have no adequate remedy at law and will be irreparably damaged in that they could possibly lose their home without the Court affording them the relief prayed for hereunder; and, that they have no way in which to recover the excess amounts of money due them by virtue of the above and foregoing.

15. That in brief the Plaintiff recovered THREE HUNDRED THIRTY ONE THOUSAND FIVE HUNDRED FIFTY FOUR AND 59/100 ($331,554.59) DOLLARS which sum included $8,000.00 in attorney's fees from a single mortgage and note, whereas

in fact by the admission of the Plaintiff itself there was due a maximum of ONE HUNDRED SIXTY SIX THOUSAND SIXTY THREE AND 23/100 ($166,063.23) DOLLARS. The Defendants herein seek the surplus and a set-off from the mortgage obligation contained in this lawsuit.

WHEREFORE, the Counter-Plaintiffs pray as follows:

A. That this Court order an accounting of all obligations involving mortgages between the parties hereto.

B. That this Court order and direct the Plaintiff to pay to the Counter-Plaintiffs herein any excess monies held by them Sheriff's sales held under case W77G1825CH and 77 CH 337, which excess is the difference between the monies recovered by the

Plaintiff and the actual obligation of the Counter-Plaintiffs' herein.

C. That the Court direct that the Counter-Plaintiffs herein receive a credit, which is due them, of TWENTY THOUSAND ($20,000.00) DOLLARS.

D. That the Court order and direct the Plaintiff to prepare, issue and deliver to the Counter-Plaintiffs herein, a release and satisfaction of the note and mortgage involved in this cause.

E. That the Court award the Counter-Plaintiffs reasonable attorney's fees and costs by virtue of the above and foregoing acts required by the Counter-Plaintiffs to engage an attorney and rendering services hereunder in the above

and foregoing.

F. For such other and further relief as this Court may deem meet.

JAY JONES,INC., JAY JONES and BETTY JONES, BEVERLY BANK AS TRUSTEE UNDER TRUST NO.8-4244

BY:_____

_____

JAY JONES and BETTY JONES, after being first duly sworn upon oath, depose and say they have read the above and foregoing by them subscribed, individually and duly authorized agents of the Counter-Plaintiffs herein, know the same to be true in substance and in fact.

_____

_____

SUBSCRIBED AND SWORN TO BEFORE ME THIS ____ DAY OF NOVEMBER A.D. 1978.

_____(NOTARY PUBLIC)

Arthur Rosenblum, Attorney for Defendants
69 West Washington Street
Chicago, Illinois 60602
Phone 263 4936

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT CHANCERY DIVISION

ILLINOIS SAVINGS & LOAN ASS'N, et al.,	)	
v.	)	NO. 77 CH 4763
BEVERLY BANK, as trustee U/T #8-4244, et al.	)	

ORDER

This cause coming on to be heard upon the Defendants' Petition of August 14, 1978 under Sec. 72 of the Illinois C.P.A. praying for orders vacating the Decree of Foreclosure and Sale, Sheriff's Sale, order approving deficiency and Sheriff's Report of Sale, order of default of January 12, 1978. The Plaintiff's Reply thereto; and the Defendants' Response to said Reply; the Court having heard arguments of counsel

IT IS HEREBY ORDERED THAT:

1. the Defendants' Petition under Section 72 of the Illinois C.P.A. is denied.
2. that execution of the Decree of Foreclosure and Sale and issuance of Sheriff's Deed be stayed 30 days.
3. that Defendants' Motion to file Petition, Counter Complaint for Accounting, Set-off and other Relief in this case is denied without prejudice to Defendants taking other remedies if any.

Name: Arthur Rosenblum
Attorney for Defendants
69 West Washington
Chicago, Illinois 60602
263-4936

Enter:

_____
Judge

November 8, 1978

MORGAN M. FINLEY, CLERK OF THE CIRCUIT COURT OF COOK COUNTY

STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT CHANCERY DIVISION

ILLINOIS SAVINGS AND LOAN ASSOCIATION, now known as 1st FINANCIAL SAVINGS AND LOAN ASSOCIATION, Plaintiff,	)	
vs.	)	NO. 77CH4763
BEVERLY BANK As Trustee u/t/a dated 3-29-73, #8-4244; JAY JONES, BETTY JONES, et al Defendants.	)	

PETITION FOR RECONSIDERATION

NOW COME, JAY JONES and BETTY JONES, individually and as sole beneficiaries of a certain land trust known as Beverly Bank as Trustee under trust dated 3-29-73, #8-4244, also defendant herein; and, on behalf of the said Beverly Bank as Trustee, under the above trust, complain of the Plaintiff as follows:

1. That on or about the 30th day of January, 1975, the said Beverly Bank as Trustee through the direction of Jay Jones and Betty Jones, and Jay Jones and Betty Jones individually, executed a certain mortgage in favor of the plaintiff for the sum of ONE HUNDRED FIFTY THOUSAND ($150,000.00) DOLLARS, which was recorded in the office of the Recorder of Deeds of Cook County, Illinois as No. 22991639 on February 5, 1975.

2. That the Plaintiff instituted the above Complaint herein to foreclose the said mortgage and requested other relief because of an alleged default by the Petitioners herein, alleging that the default as of June 1, 1976, including all succeeding payments and the principal balance was due in the sum of $153,936.02.

2. A Decree of Foreclosure and Sale was entered on January 12, 1978. That the Plaintiff thereupon did through the Sheriff of Cook County, Illinois hold a public sale on February 16, 1978, and caused the Court to enter an order on February 23, 1978 approving the Sheriff's Report and Sale and Distribution.

3. That the Sheriff's Report and Sale filed February 22, 1978, set forth that there was bid in on the said Sheriff's Sale the sum of $184,445.46, and that the amount due to the Plaintiff was $184,859.46, and the Court thereupon entered a deficiency against the defendants in the sum of $414.00.

4. That these Defendants paid to the Plaintiff in regard to the above mortgage the sum of TWENTY THOUSAND ($20,000.00) DOLLARS, on or about May 24, 1977, which amount is not and was not credited to the Defendants by the Plaintiff and which sum should have been used to reduce any obligations of the Defendants on the mortgage. That the Plaintiff through their attorney has acknowledged such a credit. That the Plaintiff did not inform the Court of the said $20,000.00 credit, so that assuming the Sheriff's Report and Sale was correct, the amount due at the time of the sale, by these Defendants to the Plaintiff was ONE HUNDRED SIXTY FOUR THOUSAND FOUR HUNDRED FORTY FIVE and 46/100 ($164,445.46) DOLLARS, plus further

credits by reason of excessive interest charged and instead of $184,445.46.

5. That these defendants allege that the Plaintiff has been fully paid any and all amounts due him on the aforesaid mortgage, and that there are no monies due to the Plaintiff by reason of those matters hereinafter set forth.

A. That the Defendants, were obligated to the Plaintiff on a second and different mortgage dated May 15, 1974 in the sum of ONE HUNDRED FIFTY THOUSAND ($150,000.00) DOLLARS, which gave a security of two parcels of real estate, one in Will County, Illinois and one in Cook County, Illinois and recorded as follows:

   Cook County property recorded as Document No. 22719099.

   Will County property recorded as R74-11278.

B. That the Plaintiff herein claimed that the persons obligated on the mortgage set forth in Paragraph 8 were Jay Jones Inc., Jay Jones, Betty Jones, Beverly Bank as Trustee under Trust Agreement dated February 21, 1975, Trust 8-4950, which trust is controlled by Jay Jones and Betty Jones, the sole beneficiaires thereof.

C. That the Plaintiff herein, contended that the persons named in the preceding Paragraph, had defaulted

on the said mortgage, which involved the property in Will County and not Cook County, and thereupon instituted two separate foreclosure suits, one in the Circuit Court of Will County No. W77G1825CH, and the second suit in the Circuit Court of Cook County, Illinois under No. 77 Ch 3738 - both foreclosures involving the same mortgage and the same obligation, seeking to foreclose the mortgage in each of the counties on each parcel of property given as security.

D. That under case 77CH 3738 the Plaintiff herein, and the Plaintiff in the said 77CH 3738 proceeded to default the Defendants therein, obtained a Decree of Foreclosure and Sale, proceeded to a Sheriff's Sale, obtained an order approving the Sheriff's Sale, obtained an order approving the Sheriff's Report and Sale and Distribution, and, obtained a Deed to the property in Cook County, Illinois. That at said sale, there was paid the sum of ONE HUNDRED SIXTY SIX THOUSAND SIXTY THREE AND 23/100 ($166,063.23) DOLLARS, which sum included $5,000.00 attorney's fees.

E. That under case W. 77G1825 CH, the Plaintiff herein and the Plaintiff in the above entitled matter proceeded to default the Defendants therein, obtained a Decree of Foreclosure and Sale, proceeded to a Sheriff's Sale, obtained an order approving the Sheriff's Report and

Sale and Distribution, and, obtained a Deed to the property in Will County, Illinois, that at said sale, there was paid the sum of ONE HUNDRED SIXTY FIVE THOUSAND NINE HUNDRED NINETY TWO AND 36/100 ($165,992.36) DOLLARS, which sum included $3,000.00 in attorney's fees.

F. That the Plaintiff herein charged two amounts for attorney's fees to foreclose the same mortgage and in equity, the Court should set a reasonable fee for such foreclosure rather than the sum of a total of $8,000.00.

G. That the Plaintiff assuming its claim is correct, recovered THREE HUNDRED THIRTY ONE THOUSAND FIVE HUNDRED FIFTY FOUR AND 59/100 ($331,554.59) DOLLARS, wherein in fact, at the most, the Plaintiff was entitled to recover by reason of the single mortgage obligation, the sum of ONE HUNDRED SIXTY SIX THOUSAND SIXTY THREE AND 23/100 ($166,063.23) DOLLARS, and is therefore unjustly enriched and holds the monies of the Defendants in the sum of ONE HUNDRED SIXTY FIVE THOUSAND FOUR HUNDRED NINETY ONE AND 36/100 ($165,491.36) DOLLARS, plus any amount set by the Court as an excessive fee for attorney's fees which fully pays all obligations due Plaintiff.

6. That the Defendants have a set-off and credit of $165,491.36 against the mortgage obligation of their home, which is the subject matter of the present Complaint

in Chancery, namely 77CH 4763. That this Court should order an accounting, allowing a setoff and direct the Plaintiff to deliver to the Defendants a full and complete Satisfaction of Decree, cancellation and release of the mortgage obligation and note hereunder.

7. That the Defendants herein have no adequate remedy at law and will be irreparably damaged in that they could possibly lose their home without the Court affording them the relief prayed for hereunder; and, that they have no way in which to recover the excess amounts of money due them except by virtue of the above and foregoing. That in the event the Defendants institute a new suit, setting forth the above facts, in a Court of Chancery, their home may be sold during the pendency of that suit.

WHEREFORE, the Petitioners pray as follows:

A. That this Court enter an order enjoining and restraining the Sheriff of Cook County, Illinois from issuing a Sheriff's Deed to the Plaintiff.

B. That the Court direct the Petitioners herein receive a credit, which is due them of TWENTY THOUSAND ($20,000.00) DOLLARS.

C. That the Court order and direct the Plaintiff to prepare, issue and deliver to the Petitioners herein, a release and satisfaction of the note and mortgage involved in this cause.

D. That the Court award the Petitioners reasonable attorney's

fees and costs by virtue of the above and foregoing acts required by the Petitioners to engage an attorney and rendering services hereunder in the above and foregoing.

E. For such other and further relief as this Court may deem meet.

JAY JONES, INC. JAY JONES AND BETTY JONES, BEVERLY BANK As TRUSTEE UNDER TRUST NO. 8-4244

BY: _____

_____

JAY JONES and BETTY JONES, after being first duly sworn upon oath, depose and say that they have read the above and foregoing by them subscribed, individually and as duly authorized agents of the Petitioners herein, know the same to be true in substance and in fact.

_____

_____

SUBSCRIBED and SWORN to before me this 30th day of November, A.D., 1978.

_____
Notary Public

Arthur Rosenblum
Attorney for Petitioners
69 W. Washington St.
Chicago, IL 60602
Phone 263 4936